In the High Court of Uttaranchal, at Nainiatal.

Civil Writ Petition No. 1534(S/S) of 2004.

Smt. Devki Devi W/o Late Lachman Singh R/o through Jagdish Chandra Joshi, Durga Colony, Nawabi Road, Haldwani (Nainital) … Petitioner.

Versus

1- Superintending Engineer, 53rd Circle Lok Nirman Vibhag, Haldwani.
2- Adhishasi Abhiyanta, Nirman Khand Lok Nirman Vibhag Haldwani.
3- State of Uttaranchal through Secretary Lok Nirman Vibhag, Dehradun … Respondents.

Sri Chetan Joshi, learned counsel for the petitioner.
Sri Harendra Belwal, learned S.C. for the respondents.

Hon'ble Rajesh Tandon, J.

By means of present writ petition the petitioner has prayed to issue writ, order or direction in the nature of mandamus commanding the respondents to provide employment to the petitioner under the Dying in Harness Rules, 1974.

Briefly stated the facts of the case are that the petitioner is the widow of late Lachman Singh who has worked on the post of Beldar as daily wager till 26-2-1982 and from 26-2-1982 as Beldar in work charge establishment till the date of his death, that is, 22-5-1994. Lachman Singh had died on 22-5-1994 during his service tenure with the respondents. The petitioner made representation for her employment under Dying in Harness Rules in place of her husband but the same has been turned down on the ground that the petitioner's husband has expired on 22-5-1994, that is, prior to the insurance of the memorandum dated 27-6-1996 and therefore she is not entitled for employment under the said rules.

The petitioner has stated in her writ petition that her husband late Sri Lachman Singh was the bread-earner of the family; that she has minor children and there is no source of

income in the family and that she is entitled to job under Dying in Harness Rules 1974.

The respondents by filing the written statement admitted that the husband of the petitioner was initially engaged in the department as daily wager and from 26-2-1982 he was working in work charge establishment on the post of Beldar and unfortunately died due to ailment on 22-5-1994. It was also averred that in accordance with the G.O. No. 1391/29-4-93-27 MG/93 dated 11-3-1993, the employees working in the work charge establishment do not come within the purview of Government employees, as such the dependant of work charge establishment employees are not entitled to get benefit during Dying in harness Rules, 1974.

In Smt. Sushma Gosain and others versus Union of India and others (1989) 4 Supreme Court Cases 468, the Apex has held as under:-

> *"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."*

The Division Bench of this Court in the matter of Naresh Kumar versus Union of India and others 2003 U.D., 167 has held as under:

> *" The Apex Court in the case of State of U.P. and others vs. Paras Nath A.I.R. 1998 SC page 2612 in para –5 has held as under:-*
>
> *The purpose of providing employment to a dependent of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected*

death while still in service. To alleviate the distress of the family, such appointment are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family f the deceased government servant.

In the case of Dhalla Ram vs. Union of India AIR 1999 SC 564, the Hon'ble Supreme Court has held that appointment on compassionate ground is not a method of recruitment, but is a facility to provide for immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution."

As will appear from the facts of the present case that the petitioner has applied for appointment under Dying in Harness Rules and the respondents have rejected her claim on the ground that her husband was daily wager and has not completed 240 days in a calendar year. According to the petitioner her husband has worked as Beldar on daily wage basis till 26-2-1982 and thereafter from 26-2-1982 to 22-5-1994, the date of his death, worked as Beldar in work charge establishment. The respondents have not denied the above facts. It was also not averred that the post of Beldar on which late Lachman Singh was working has ceased and juniors to him have not been made regular. The petitioner as the widow of late Lachman Singh who was a Beldar and he died in harness leaving behind the petitioner and minor children, therefore to mitigate the hardship of the family, the petitioner approached the respondents to give her appointment on compassionate ground under the aforesaid Rules so that the family can be saved from starvation. Now the grievance of the petitioner is that though considerable time has elapsed but she was not given employment on the death of her husband as dependant of government servant under Dying in Harness Rules, 1974.

In the case of Jagdish Prasad vs. State of Bihar and another 1996 1 SCC 301, it has been held as under:-

"The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress to the family by sudden demise of the earning member of the family."

In view of the aforesaid facts and circumstances, a writ of mandamus is issued directing the respondents to consider the appointment of the petitioner under Dying in Harness Rules.

Respondents are directed to comply the aforesaid directions within a period of one month from the issue of the certified copy of the order.

Consequently, the writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon, J)

22-12-2005

ISB